

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

NO. 7:10-CV-100-FL

TASHA S. MANNING

Plaintiff,

v.

COUNTY OF COLUMBUS
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Defendant.

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ORDER

This matter comes before the court on the memorandum and recommendation (“M&R”) of Magistrate Judge William A. Webb, pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), in which he recommends that the court dismiss plaintiff’s complaint as frivolous. No objections to the M&R have been filed, and the time within which to make any objection has expired. In this posture, the issues raised are ripe for ruling. For the reasons that follow, the court adopts the recommendation of the magistrate judge and dismisses the complaint.


On May 25, 2010, plaintiff filed an application to proceed *in forma pauperis* in this action. The magistrate judge ordered plaintiff to particularize her application on June 3, 2010, and struck certain documents filed with the application from the docket where they contained the unredacted names of plaintiff’s juvenile children. Plaintiff particularized her application on June 7, 2010. The magistrate judge found that plaintiff had demonstrated sufficient and appropriate evidence of inability to pay the required courts costs, but recommended that plaintiff’s proposed complaint be

dismissed as frivolous under 28 U.S.C. § 1915(e)(2). See Cochran v. Morris, 73 F.3d 1310, 1315-16 (4th Cir. 1996). Under § 1915(e)(2), the court will dismiss an action that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. A case is “frivolous” if it lacks an arguable basis in either law or fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989).

The magistrate judge recommends dismissing the complaint for two reasons. First, he notes that plaintiff failed to re-submit the struck documents in a redacted format, as ordered by the magistrate judge. Plaintiff was warned that failure to do so would result in a recommendation that her complaint be dismissed. Second, the magistrate judge notes that the complaint seeks the return of plaintiff’s child to her physical custody. Plaintiff alleges that defendant, a state agency, removed the child from her care. As the magistrate judge noted, the court generally abstains from hearing such matters. See Canton v. Cohen, 442 F.3d 196, 202 (4th Cir. 2006).

Having carefully reviewed the filings in this case and the M&R, the court agrees with the conclusions reached by the magistrate judge and thus ADOPTS his findings and recommendations (DE # 6).^{*} Plaintiff’s complaint is DISMISSED. The clerk is DIRECTED to close this case.

SO ORDERED, this the 5th day of August, 2010.


LOUISE W. FLANAGAN
Chief United States District Court Judge

^{*} Upon careful review of the record, “the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). In the absence of a specific and timely filed objection, the court reviews the magistrate judge’s findings and conclusions only for clear error, and need not give any explanation for adopting the M&R. Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005); Camby v. Davis, 718 F.2d 198, 200 (4th Cir. 1983).